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January 30, 2009

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: September 16, 2008

Case Number: TSO-0676

This Decision considers the eligibility of XXXXXXXX XXXXXXXX (hereinafter referred to as "the individual") to hold an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." As explained below, it is my decision that the individual should not be granted an access authorization. 1/

I. BACKGROUND

In March 2007, the individual submitted a Questionnaire for National Security Positions (the 2007 QNSP) in which he identified several arrests involving his use of alcohol. In April 2008, the DOE conducted a Personnel Security Interview with the individual (the 2008 PSI) regarding his misuse of alcohol and other concerns. In addition, the individual was evaluated in May 2008 by a DOE-consultant psychiatrist (the DOE-consultant Psychiatrist), who issued a Psychiatric Report in June 2008 setting forth her conclusions and observations. DOE Exhibit 3.

In August 2008, the Manager for Personnel Security of the DOE area office where the individual is employed (the Manager) issued a

1/ Decisions issued by the Office of Hearings and Appeals (OHA), with names and other personal identifying information deleted, are available on the OHA website located at <http://www.oha.doe.gov>. The text of a cited decision may be accessed by entering the case number of the decision in the search engine at <http://www.oha.doe.gov/search.htm>.

Notification Letter to the individual. Enclosure 2 to this letter, which is entitled "Information Creating a Substantial Doubt Regarding Eligibility for Access Authorization," states that the individual's behavior has raised security concerns under Sections 710.8(h) and (j) of the regulations governing eligibility for access to classified material (Criteria H and J). Criterion H refers to information indicating that an individual has "an illness or mental condition of a nature which, in the opinion of a psychiatrist or licensed clinical psychologist, causes or may cause, a significant defect in judgment or reliability." Criterion J refers to information indicating that an individual has "[b]een, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse."

With respect to Criteria H and J, Enclosure 2 states that in the opinion of the DOE-consultant Psychiatrist, the individual meets the DSM-IV TR criteria for "Alcohol Dependence, with Physiological Dependence, an illness or mental condition which causes, or may cause, a significant defect in judgment or reliability."

In further support of the Criteria H and J concerns, Enclosure 2 cites nine instances in which the individual was arrested for alcohol related behavior. Specifically, in 2000, he was arrested for Aggravated Driving While Intoxicated (DWI), Battery upon a Police Officer, and Resisting/Evading/Obstructing a Police Officer. In that same year, he was arrested for another DWI. In 1992, he was arrested for DWI, Driving with a Revoked Driver's License, and Open Container. Also in 1992, he was arrested and charged with Felony Commercial Burglary, and admitted that he was intoxicated at the time of the incident. The individual also was arrested for DWI in 1989, 1986, 1985, 1982 and 1978.

Enclosure 2 also refers to the following information concerning the individual's use of alcohol.

1. During his May 2008 psychiatric evaluation, he stated that "probably I will never stop drinking," and
2. At his April 2008 Personnel Security Interview, he admitted that his wife has expressed concern about his use of alcohol and told him that he drinks too much.

See Enclosure 2 to Notification Letter, DOE Exhibit 1.

II. THE DECEMBER 2008 HEARING

At the individual's request, a hearing was convened in December 2008 to afford him an opportunity to submit information to resolve these concerns. At the hearing, testimony was received from five persons. The DOE presented the testimony of the DOE-consultant Psychiatrist. The individual testified and presented the testimony of his wife, his father and a longtime friend who has also served as his attorney.

The hearing testimony focused on the opinions of the DOE-consultant Psychiatrist concerning the individual's diagnosis, and the individual's efforts to document an alleged period of reduced alcohol consumption beginning in July 2007, and a period of abstinence from alcohol beginning in mid-September 2008.

III. APPLICABLE STANDARDS

A DOE administrative review proceeding under this Part is not a criminal case, in which the burden is on the government to prove the defendant guilty beyond a reasonable doubt. In this type of case, we apply a different standard, which is designed to protect national security interests. A hearing is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). The burden is on the individual to come forward at the hearing with evidence to convince the DOE that granting or restoring his access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.27(d).

This standard implies that there is a presumption against granting or restoring of a security clearance. See *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) (the "clearly consistent with the interests of national security test" for the granting of security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance). Consequently, it is necessary and appropriate to place the burden of persuasion on the individual in cases involving national security issues. *Personnel Security Hearing*, Case No. VSO-0002 (1995).

Once a security concern has been found to exist, the individual has the burden of going forward with evidence to rebut, refute, explain, extenuate or mitigate the allegations. *Personnel Security*

Hearing, Case No. VSO-0005 (1995), *aff'd*, Case No. VSA-0005 (1995). See also 10 C.F.R. § 710.7(c).

IV. ANALYSIS OF TESTIMONY AND FINDINGS

A. Diagnosis

At the hearing, the DOE-consultant Psychiatrist testified that she continues to believe that her diagnosis of Alcohol Dependence for the individual is appropriate, because the individual's admitted behavior meets the criteria for that diagnosis. TR at 45-47. Initially, the individual testified that although he admits that he had an alcohol problem at one time, he does not believe that he ever was alcohol dependent because he never consumed alcohol "every day or every weekend" and because he always was able to function well in the workplace. TR at 32-33. However, after hearing the testimony of the DOE-consultant Psychiatrist, the individual stated that she "really opened my eyes" to the difference between alcohol abuse and dependence. TR at 47. He also stated that she had convinced him of "what I need to do to do better for myself and my family", and stated that he intended to seek alcohol counseling. TR at 48. Based on this testimony, I conclude that the individual no longer disagrees with the DOE-consultant Psychiatrist's diagnosis of Alcohol Dependence. I further conclude that the weight of evidence concerning the individual's past actions and behaviors supports that diagnosis. I therefore turn to the issue of whether the individual has demonstrated rehabilitation or reformation from this condition.

B. Rehabilitation and Reformation

The individual is not participating in any alcohol-related counseling or other alcohol programs. He states that in July 2007, his sister was killed by a drunk driver, and that since then he stopped drinking for long periods of time, and only had a beer or two occasionally. TR at 31. The individual stated that he last consumed alcohol to the point of intoxication in 2007, prior to his sister's death. TR at 35.

The individual testified that he last consumed alcohol sometime before September 15, 2008. TR at 31, 39. He stated that some workmen who were helping him construct a cabin near his work site offered him a beer. He stated that "I kind of hesitated, but I did drink a couple [of beers] with them." TR at 36. He therefore asserts that as of the date of the hearing, he has been sober for about two and a half months.

At the hearing, and in a post-hearing submission, the individual submitted testimony and evidence to corroborate his moderate alcohol consumption after July 2007 and his recent sobriety. The individual's wife testified that the individual has consumed little alcohol in recent months, and that she definitely has not seen him consume alcohol since September 1, 2008. TR at 15-16. She stated that she is convinced that the individual is committed to sobriety for health reasons and in order to set a good example for his grandchildren. She indicated that he no longer socializes with old friends who drink. TR at 11-13.

The individual's wife stated that she could not testify concerning the individual's sobriety on week nights because, since June 2008, the individual has spent week nights alone in a trailer near his work site. TR at 18, 37. Following the hearing, the individual submitted a letter signed by the couple who are his neighbors at the trailer site. In this letter, the neighbors state that they have never observed the individual exhibit any signs of intoxication such as unsteadiness, slurred speech, or irrational behavior. See Individual's submission of December 12, 2008.

The individual's father testified that the July 2007 death of the individual's sister changed the individual's behavior concerning alcohol, and that he has not seen the individual consume alcohol in 2008. He stated that no alcohol was present at their recent Thanksgiving celebration. TR at 22-25. The individual's longtime friend and attorney testified that he has seen the individual on about four occasions in the last six months, and that the individual did not consume alcohol or appear to have recently consumed alcohol on those occasions. He also stated that about a month prior to the hearing, the individual told him that he had stopped consuming alcohol because it was causing more problems in his life than it was worth. TR at 29.

In light of the individual's admitted isolation since June 2008 in a trailer near his work site from Monday night through Thursday night, I find that the testimony and evidence presented in this proceeding provide insufficient corroborative support for the individual's assertions that he consumed only moderate amounts of alcohol since his sister's death in July 2007, and that he has been abstinent from alcohol since September 15, 2008. The individual's wife testified that she has no telephone contact with the individual on week nights because the trailer has no cell phone reception. TR at 18. Moreover, I find that the written assertions of the individual's neighbors at the trailer site are inadequate. They indicate that they often see him "come and go" from his trailer, and that they sometimes hear him working on a cabin that

he is building next to his trailer. I find that these neighbors do not have the level of social contact with the individual that would permit them to provide convincing support concerning his claim of moderation leading to sobriety. Moreover, their letter asserts only that they have not observed him in an intoxicated state. They do not even claim to know whether or not he consumes alcohol at his trailer. Accordingly, I cannot conclude that the individual has corroborated his assertions of moderate alcohol use since July 2007 and sobriety since September 15, 2008. See *Personnel Security Hearing*, Case No. TSO-0593 (2008)(sobriety not established by an individual who spent Monday through Thursday nights alone, and who was not engaged in recovery activities).

Even if I found that the individual had demonstrated abstinence from alcohol since September 15, 2008, it would not resolve the security concerns in this proceeding. At the hearing, the DOE-consultant Psychiatrist testified that she believes that the individual's claimed two and a half months of sobriety would be too short a time for the individual to demonstrate that he has made a permanent change. TR at 47. She stated that, in her opinion, the individual would need to demonstrate a greater understanding that he has an alcohol problem before a period of reformation based on abstinence alone could begin. TR at 47-48.

I am convinced by the DOE-consultant Psychiatrist's testimony. I agree with the DOE-consultant Psychiatrist that the individual's claimed two and a half months of sobriety are not sufficient to demonstrate that he is at low risk for relapse. In this regard, I note that medical professionals generally require a full year of abstinence to establish rehabilitation from alcohol dependence through abstinence and alcohol treatment, because a one year period of abstinence allows an individual to go through a sufficient number of ups and downs that normally occur within a year to test whether he or she can withstand normal stresses without turning to alcohol. See *Personnel Security Hearing*, Case No. TSO-0150 (2005). Further, I agree with the DOE-consultant Psychiatrist that formal alcohol treatment, such as alcohol counseling or attendance at Alcoholics Anonymous, is appropriate for the individual's rehabilitation. Such counseling would allow the individual to develop the understanding of his alcohol problem necessary to reform his behaviors concerning alcohol and to maintain his sobriety. See TR at 47-48. The individual has not even begun to participate in this aspect of a rehabilitation program. Accordingly, I find that the individual has not resolved the DOE's Criteria H and J concerns.

V. CONCLUSION

For the reasons set forth above, I find that the individual suffers from Alcohol Dependence subject to Criteria H and J. Further, I find that this derogatory information under Criteria H and J has not been mitigated by sufficient evidence of rehabilitation and reformation. Accordingly, after considering all of the relevant information, favorable or unfavorable, in a comprehensive and common-sense manner, I conclude that the individual has not demonstrated that granting him an access authorization would not endanger the common defense and would be clearly consistent with the national interest. It is therefore my conclusion that the individual should not be granted an access authorization. The individual or the DOE may seek review of this Decision by an Appeal Panel under the regulation set forth at 10 C.F.R. § 710.28.

Kent S. Woods
Hearing Officer
Office of Hearings and Appeals

Date: January 30, 2009